

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-091983

09/20/2011

HONORABLE LINDA A. AKERS

CLERK OF THE COURT
I. Ostrander
Deputy

7575 E REDFIELD L L C

TARA K MILLER

v.

KIDZART ARIZONA L L C, et al.

KIDZART ARIZONA L L C
NO ADDRESS ON RECORD

JESSICA ANNE HUNTER
NO ADDRESS ON RECORD
KENN HUNTER
NO ADDRESS ON RECORD
ALISA C LACEY
ARTS IN STUDIO L L C
NO ADDRESS ON RECORD
JENNIFER STULL
19223 N 91ST WAY
SCOTTSDALE AZ 85255
TIMOTHY STULL
19223 N 91ST WAY
SCOTTSDALE AZ 85255

RULING

The Court has before it Plaintiff's *Motion for Judgment on the Pleadings Against Only Timothy Stull and Jennifer Stull* filed July 29, 2011, Defendants Timothy Stull and Jennifer Stull's Motion to Stay Judgment and Motion to Dismiss, and Plaintiff's reply to Defendants' motions.

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Plaintiff alleges that on or about November 1, 2005, Kidzart entered into a Full Service Office Lease for the purpose of leasing Suite 207 at 7900 East Greenway, Scottsdale, Arizona. The lease was for a 36-month period, from November 1, 2005, and ending on October 21, 2008. On February 1, 2007, Kidzart assigned its rights under the lease to Kidzart, LLC, and on August 14, 2007, Kidzart, LLC, entered into a written sublease with the Stull Corporation whereby the Stull Corporation was to occupy the premises and pay all amounts due under the lease through the end of the lease term on October 21, 2008. Timothy and Jennifer Stull agreed in writing to personally guarantee the obligations of the Stull Corporation under the sublease. The Stull Corporation abandoned the leased premises on or before October 1, 2007. No rent was paid thereafter under the terms of the lease or sublease or by the Stulls as personal guarantors.

Plaintiff alleges that it made attempts to mitigate its damages by actively attempting to lease the premises but was unable to re-let the premises before expiration of the lease term on October 21, 2007.

Defendants Kidzart Arizona, LLC, aka Arts in Studio, LLC, have failed to file an answer to the complaint.

On June 9, 2011, Defendants Kenn and Jessica Anne Hunter filed their answer to the complaint.

Plaintiff asserts that Defendants Timothy Stull and Jennifer Stull's answer to the complaint does not deny the existence of the debt nor their "obligation, responsibility, and liability thereto." The Court agrees that the answer does not admit or deny any averments. The Defendants' answer is not legally sufficient. Rule 8(b), Ariz. R. Civ. P., provides that "[a] party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies."

On July 29, 2011, Plaintiff moved for Judgment on the Pleadings against Timothy Stull and Jennifer Stull only.

On August 4, 2011, Defendants then filed a Motion to Stay Judgment (alleging that the complaint was not specific), together with Motions to Dismiss on August 4, 2011, and September 9, 2011. Plaintiff responds that Defendants have failed to provide a legally sufficient denial of the complaint, and the Motions to Dismiss should be stricken as "outside the scope of their initial pleading." In the alternative, Plaintiff asserts that it is entitled to summary judgment as there is no genuine issue of material fact that would preclude judgment in its favor if the Court were to treat all pending motions as motions for summary judgment.

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The Court notes that this case is scheduled for arbitration on September 27, 2011, at 10:00 a.m.

IT IS ORDERED denying Defendants Timothy Stull and Jennifer Stull's Motions to Dismiss and Motion to Stay Judgment.

IT IS FURTHER ORDERED granting Plaintiff's *Motion for Judgment on the Pleadings Against Only Timothy Stull and Jennifer Stull*.

IT IS FURTHER ORDERED affirming the Arbitration Hearing currently scheduled for September 27, 2011, at 10:00 a.m. as to Defendants Kenn Hunter and Jessica Anne Hunter. As Kidzart Arizona, LLC, aka Arts in Studio, LLC, has filed no answer, it is subject to default.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.